

A
FULL AND IMPARTIAL
VIEW
OF THE
TRIAL
OF

Donald Maclane,

Who was indicted at the Assizes held at *Guildford*,
on *Monday* the 8th of *August*,

FOR THE
WILFUL MURDER
OF

William Allen, the Younger.

By a STUDENT of GRAY's-INN.

Nothing extenuate, or set down ought in Malice.

SHAKESPEARE,

— Audi,

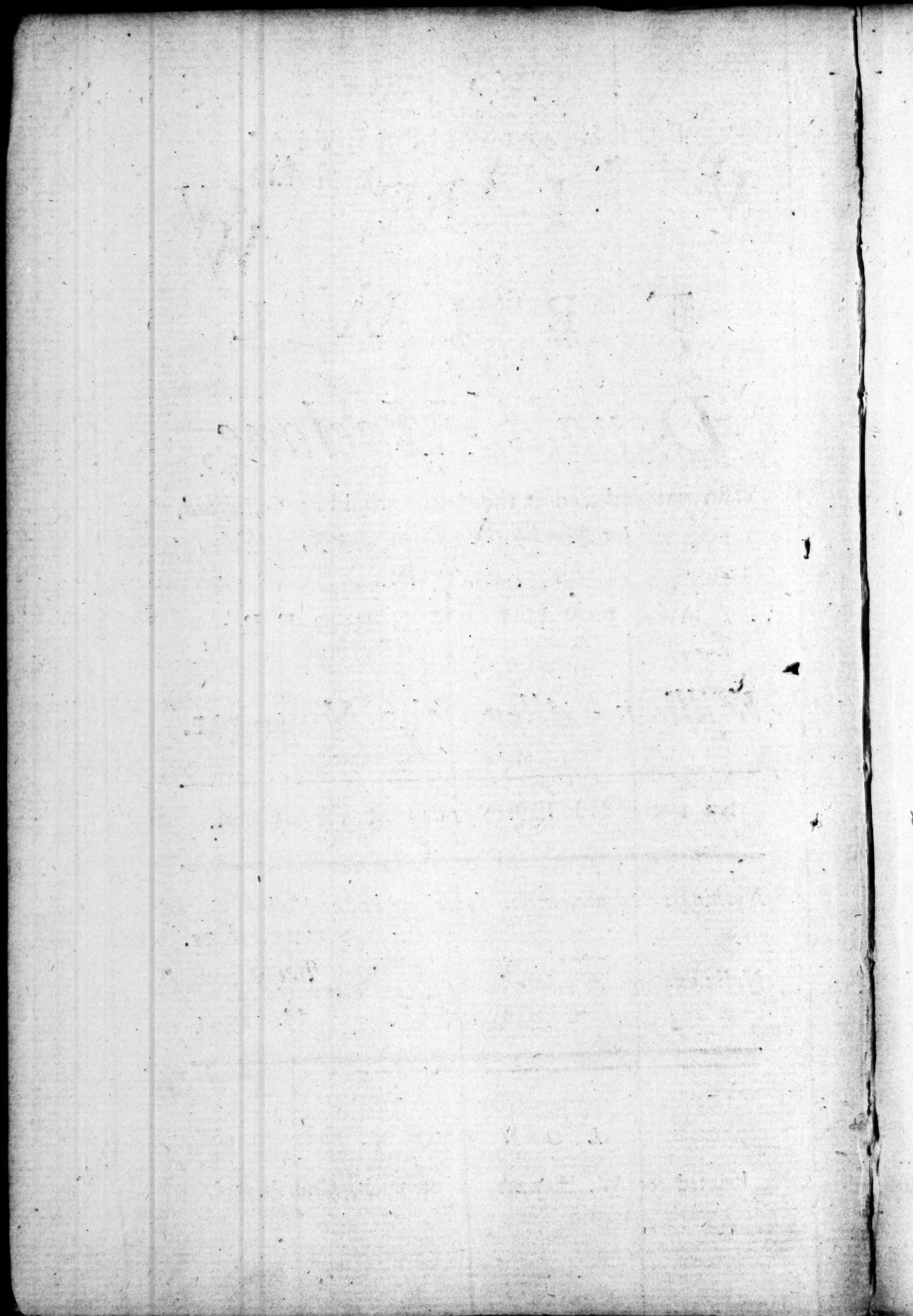
Nulla unquam, de morte hominis, cunctatio longa est.

JUVENAL.

L O N D O N :

Printed for W. HARRIS, in St. Paul's Church-yard,

W-15



TO THE
READER.

THE following View of the proceedings relating to Donald Mac-lane, was transcribed from the notes which I took in short-hand during my attendance at the Assizes of Guildford; they were written for my own private use, without the least intention of being printed; but understanding the generality of mankind were very anxious to know the particulars which appeared through the course of the evidence upon the trial; and as many representations very inconsistent with the truth had been given of this important affair in some of the news-papers, and as I had been informed no account of the proceedings would be published by Authority, I flattered myself the following sheets would not prove unacceptable to the public.

At

*At the same time I deliver these few pages to the press, I am not without some apprehensions that I run the hazard of a contempt of the court; for, whether a Judge who presides during an extraordinary trial, has authority to prevent the particulars of such trial being wrote down, or to suppress or punish the publication of them, provided the facts are faithfully and candidly stated, is a question I confess myself not sufficiently skilled in the law to determine; but, I presume, that as by the British Constitution every trial is obliged to be determined in open court, and as I humbly apprehend a criminal may refuse to plead, unless he is tried in the most public manner, there can be no principal, either in law or equity, for suppressing the publication of any judicial proceeding: more especially as in all cases of innocence, the party concerned has the peculiar advantage of circulating that innocence to every corner of the universe; and, as guilty
men*

men are frequently intimidated from the repetition of bad actions by shame, which they would not be deterred from committing by principal, and dread the publication of their iniquity much more than the punishment which is provided by the law to restrain it.

The heats and animosities that have lately distracted this unhappy country, almost to the utter subversion of every spark of truth and humanity amongst us, I look upon with the utmost concern, and as I cannot help observing, that the many false accounts that have been propagated, relating to the present subject, have not a little contributed to inflame the minds of the people, I think it necessary to declare, that I have endeavoured to give the following Narrative without the least prejudice in favour of any of the parties, and that the reader will find an account of every material circumstance, not literally indeed, but substantially.

stantially the same, as it was delivered in court, without any alterations, or unseasonable remarks of my own: For however vain the assertion may appear, the reader may be assured that the compiler of these papers is of no party.---He is a friend to no interests but those of virtue and of truth; nor an enemy to any, but those of vice and falsehood.

M. R.

GRAY'S INN, Aug. 18,
1768.

A FULL

A
FULL AND IMPARTIAL
VIEW
OF THE
TRIAL, &c.

AT the Affizes held at Guildford, on Monday the 8th day of August 1768, at about Nine in the morning, the Grand Jury for the county of Surry, consisting of the following gentlemen,

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Right

Right Hon. *George Onslow*, Esq;

Sir Joseph Mawbey, Bart.

Sir Francis Vincent, Bart.

Philip Carteret Webb, Esq;

George Onslow, Esq;

Samuel Plumb, Esq;

Robert Nash, Esq;

James Morris, Esq;

George Woodrooffe, Esq;

Jeremiah Dyson, Esq;

John Vincent, Esq;

William Gill, Esq;

John Middlemarsh, Esq;

Daniel Ponton, Esq;

Richard Hotham, Esq;

William Godscall, Esq;

Edward Garthwaite, Esq;

George Udney, Esq;

Samuel Hurlock, Esq;

John Rows, Esq;

Anthony Chapman, Esq;

James Champaign, Esq;

Giles Strangeways, Esq;

Began

Began to consider the bills of indictment, against Alexander Murray, Esq; Donald M'Laury, and Donald Maclane, who were charged with the wilful murder of William Allen, the younger; when after examining a great number of witnesses, and sitting upwards of twelve hours, they returned *no true* bill against Alexander Murray, Esq; and Donald M'Laury; but found a *true bill* against Donald Maclane.

At seven o'clock, the next morning, the trial of Maclane came on, before the honourable baron SMYTHE: The council for the prosecution, were Mr. Serjeant Leigh, Mr. Lade, Mr. Lucas, and Mr. Baker; for the prisoner, Mr. Hervey, Mr. Cox, Mr. Robinson, and Mr. Bishop.

Donald Maclane, the prisoner, being brought to the bar, and pleading *not guilty*, the petty jury were sworn, and Mr. Serjeant Leigh then made a very sensible and candid Speech to the jury, in which he observed, that it was their Duty to consider only the simple fact for which the prisoner was indicted, uninfluenced by party or prejudice; that the prosecution was not commenced from any vindictive or malicious motives, but from the

desire which nature excited in an affectionate parent to obtain justice for the irreparable loss of an amiable and an only child, whom he had reason to suppose had been most barbarously murdered. That the prisoner at the bar was accused as the murderer ; what reasons there were to think him so, would in the course of the evidence be laid before them ; but, for his part, he should not attempt to inflame the passions of the jury by drawing a pathetic picture of Mr. Allen's feelings upon this melancholy occasion, or giving an exaggerated account of the atrociousness of the crime, to the disadvantage of the prisoner ; as he thought such proceedings were warranted neither by justice nor humanity : And, however anxious the father might be to see the law executed upon the murderer of his son, yet he was too good a man to wish for the smallest sacrifice at the expence of innocent blood.

Mr. Serjeant Leigh further observed, that the late riotous proceedings ought to have no weight with regard to the point in question, for even supposing (what was far from being the case) that

that the unhappy youth had actually been a ring-leader of the outrageous multitude which lately assembled at the King's Bench, the prisoner had no sort of right to take away his life, but should have apprehended him, that he might have been dealt with according to law. That, in a common action, where a person is arrested, and escapes from the bailiff, he has no authority to fire at, or attempt the life of his prisoner, but is to pursue and apprehend him; indeed, if the prisoner makes resistance when apprehended, the officer may repel force by force, and the *necessity* there is for his making use of violent means, and that *necessity only* will justify him if the prisoner's death should ensue. That even in cases of felony, the law is so extremely tender of the life of a subject, that it is murder to kill any persons guilty of that crime, unless they stand upon their defence, and refuse to surrender themselves, when called upon by legal authority.

The Serjeant concluded with acquainting the jury, that he assured himself they would suffer no prejudices which might arise from the temper of the times to affect their candour or integrity,
that

that justice alone was all the prosecutor required, and that he made no doubt of receiving it at their hands.

Mr. Serjeant then proceeded to the examination of the first witness for the prosecution, JOSEPH SKYDMORE, the substance of whose evidence was,

That he came to London on the 9th of last May, and lodged at his sister's, Elizabeth Hill's, nail-maker, in Smithfield; the next morning, about 9 o'clock, he went with a young woman, who was big with child, to St. George's-Fields, in order to see Mr. Wilkes, whom he had been told was to go that day to Westminster Hall. That the people having crowded about the King's Bench, the soldiers endeavoured to make them retire, and that the prisoner at the bar, having his bayonet fixed, wounded the young woman in the side through her stays, which made the witness take particular notice of him from that instant. That between 11 and 12 o'clock, some of the mob (particularly a man in a red waistcoat) threw handfulls of *grafs* at the soldiers and the justices, on which
Ensign

Ensign Murray, with a sword drawn in his hand, followed by some grenadiers, pursued the fellow, who fled across the road at the end of Blackman Street, towards a cow-house in Horsemonger Lane. That he (Skydmore) run after the soldiers to see the event, and found, when they came to the cow-house, the door was shut, which they endeavoured to force open with the butt ends of their musquets; Mr. Murray soon after entered, and went through the cow-house, which had three doors, or gates, one at each side, and another at one of the ends; the prisoner, with one M'Laury, a grenadier, then entered the cow-house, just at the time that young Mr. Allen and a little boy came in at one of the other doors; M'Laury said, *Damn him, that's him, shoot him!* on which the prisoner took aim, and fired immediately. Skydmore then saw young Mr. Allen, who had no weapon, or made the least resistance, and the little boy fall down, and heard Allen mutter some incoherent words; the prisoner then shut his pan, and the witness saw the smoke come out from the touch-hole; he was very positive the prisoner was the man that fired, as he stood within five or six yards of him

him at the time. That Ensign Murray came into the cow-house directly after, and said something to the soldiers, on which they hastily returned to the King's Bench, where the witness followed them, and saw the prisoner pull out a snuff-box, and in about half an hour after, saw an officer come up to him, take his musquet out of his hand, and *overhaule* or examine it, on which the prisoner was turned out of the ranks.

On being cross-examined, Skydmore declared he knew of no riot at the King's Bench, or heard any treasonable words made use of ; he owned, indeed, the mob threw stones at a constable whilst he was pulling down a paper ; that he did not think Ensign Murray saw Allen at all, nor did he hear him enquire which of the soldiers fired the gun. On being asked his profession, &c. Skydmore answered, he had been fourteen years in the service of his country, as a marine, but being disabled was discharged ; that he came to town to receive his little pension, and having told the above circumstances at his sister's, a woman heard them, who was acquainted with Mr. Allen the elder, and who
advised

advised him to make his information, which he did in a few days after the fact was committed.*

The second witness that appeared was NICHOLAS THWAITES, who declared, That he was in St. George's-Fields on the 10th of last May, about 11 o'clock in the forenoon, and saw a man drest in two red waistcoats, throw stones at the soldiers, and wound one of the serjeants on the mouth, on which justice Gillingham ordered the soldiers to pursue the rioter. That Ensign Murray, and three grenadiers, with several hatmen run after the fellow, who made towards the cow-house, which was within forty yards of the hay-market. That the hatmen stopped, but the grenadiers went on, and entered the cow-house, at the great gates, Ensign Murray first, and the prisoner last. That he (Thwaites) having followed the soldiers, heard M'Laury say, *Damn him, here is one one of the villains we are looking*

* During the deposition of this evidence a woman very genteelly drest, was observed leaning over the box and talking with one of the jurymen ; she was called to, by the council for the prisoner, to know if she was not related to the prosecutor, and, on her answering in the affirmative, was ordered to retire further from the jury ; upon which she burst into a flood of tears, and left the court.

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after

after—Damn him ! shoot him ! On which young Allen, who was in the cow-house, with a little boy, and a man in a white waistcoat, whose name was Brawn, cried out in a stuttering manner, *No harm, no harm !* but notwithstanding, the prisoner fired directly, and shot Allen in the breast, who instantly fell down. The prisoner then said, *Damn it, it is a good shot.*—The witness declared, he could not be mistaken in the prisoner, as he took particular notice of his face at that time. Soon after Allen rose up, and run across the road to a woman, with whom he was acquainted, crying, *I am a dead man*, and immediately expired. That Ensign Murray and his men, returned to the rest of the soldiers at the King's-Bench, where the witness saw the prisoner in the ranks, with a snuff-box in his hand, by which he was distinguished by the croud, who were very anxious to know the murderer : That some time after the officer took the prisoner's musquet out of his hand, and, as the witness imagined, found it had been discharged; on which the prisoner was turned out of the ranks, but in in a short space after, placed in them again.

Upon

Upon the cross-examination of Thwaites, he said, he came to London on the 7th of last May from the North, where he had lived as a servant with Capt. Buchanan; that he knew no body in town, but had been about Mr. Allen, the elder's house, ever since the death of the young man, and had been absolutely engaged by him as a stable-keeper, within the last fortnight. He owned, that the cow-house was very dark in some parts, (it receiving no light but what came in at the doors) and that he was not in it when the youth was killed, but stood at a little distance from the gate. It appeared also, from the depositions signed by himself, that this witness in his examinations before the coroner and the justice, had given a relation very different from that which he did in court. He never mentioned in his former depositions, that the prisoner made use of the horrid words, *Damn it, it is a good shot*, which he swore upon the trial, were so remarkable that they were seldom out of his mind; and prevaricated a good deal in some other particulars of less moment, upon his cross-examination.

JOHN OKIN, a youth, who said he was 16 years of age, was the third evidence produced by

the prosecutors.—He declared, that young Allen, who had just before left his father's house, and himself, were standing between eleven and twelve o'clock by the Draper's alms-houses, which are a good distance from the place where the soldiers were insulted. That on their hearing the drum beat to arms, and seeing the grenadiers run after a man towards the fore gates of the cow-house, young Allen who wore a red waistcoat, and himself, wanting to see the event, ran the other way, which was shorter, towards the cow-house also : That Allen went in first, and the witness followed him close ; at that instant the grenadiers entered at the other door, and, perceiving Allen, one of them, said, *Kill him !* on which a grenadier, whose person the evidence could not swear to, fired, and Allen dropt down, as likewise did Okin himself, thro' excess of fear. That directly after Ensign Murray came into the cow-house, and said, *Damn you, why did you fire ?* — The witness then got up, and saw Allen bleeding very much from the arm and breast. That Allen made the best of his way to one Miles's, near the cow-house, where he soon after died ; and this witness went immediately home, being apprehensive

prehensive of further danger, and extremely intimidated at what he had seen.

Upon Okins's cross-examination, he seemed to think it was the grenadier who spoke, that fired the gun, and declared he was sensible all the time he lay on the ground. This evidence was reprimanded by the court for making oath before the coroner in *May last*, that he was only fourteen years of age, and *now* swearing that he was sixteen.

THOMAS BRAWN, labourer, was then called, who swore to this effect; That as he was working in his own yard, near the cow-house, about ten minutes before 12 o'clock, on the 10th of May, he saw a man in a red waistcoat pursued by Ensign Murray, *three* grenadiers, and *one* hat man. That the soldiers having, as he supposed, lost sight of the man they were in quest of, endeavoured to get in at the gate of the yard, leading to the cow-house; on which he (Brawn) went up to them, and enquired what they wanted. Ensign Murray soon after unlatched the gate, and entered, *one* grenadier followed the officer, the witness went in next, and the other *two* soldiers

diere after him. That when they were all in the cow-house, one of the grenadiere seeing young Allen, who was intirely unarmed and defenceless, said to him, *Damn you, I'll shoot you !* *Damn you, do,* says another soldier ; at these words the grenadier presented his piece at the youth, and he (Brawn,) endeavouring to strike it down, the other soldier presented a musquet at the witness, who found it safest to desist from intermeddling in the affair : the first soldier then fired, and Allen fell bleeding on the ground. That Ensign Murray, who had been in the yard on the other side of the cow-house, immediately re-entering, the witness said to him, *one of your people has shot a gentleman's son ;* on this Ensign Murray asked, with an oath, *which of them had fired ?* one of the soldiers, (Brawn thinks *not* the man who *did* fire) answered, *Sir, my gun went off at half-cock by accident ;* the witness replied, *it was a lye,* and requested Ensign Muarray to order them to draw their charges, which request the ensign refused to comply with, and the soldiers went away.

Brawn was interrogated upon his cross-examination, with respect to his saying, he saw *four* soldiers

foldiers at first with Ensign Murray viz. *three* grenadiers, and *one* hat man, and afterwards taking notice but of *three*: He was also asked, Why he made so absurd a proposal, as that by which he wanted to have the men draw their charges, when he had before heard the soldier say, his musquet had gone off by accident? To these questions he gave very unsatisfactory answers. He denied, in court, that he had ever said the man, who shot Allen, was very much pitted with the small-pox, though it was proved by the council for the prisoner, that he had sworn it, in *two* of his former depositions; and it is worthy of remark, that he never mentioned in his examination, before the coroner, a single word of the soldier who presented the musquet at *him*, and that he declared he neither saw the evidences, Skydmore nor Thwaites during the whole transaction.

JOHN BLEST, attorney's clerk, was the 5th witness produced, who swore that he was in St. George's-Fields on the morning of the 10th of last May, and saw no riot; but that upon a paper, which had been stuck up against the King's Bench prison, being pulled down, the mob were
greatly

greatly displeased, and one of them, a fellow in a red waistcoat, threw a stone amongst the soldiers, which hit justice Gillam on the head, who immediately clapt his hand to the place, and said *fire!* The mob then began to disperse, and the soldiers run different ways, in order to catch the fellow in the red waistcoat. That this evidence followed in the pursuit, and when he came to the Cow-house, saw one of the soldiers present his piece, and shoot young Allen, who might have been taken prisoner with the greatest facility. That he could not swear to the person of the soldier who shot the unfortunate youth; nor did he hear or believe at a quarter of an hour before twelve o'clock, that the riot act had been read.

When Blest came to be cross-examined, it appeared that he had given a very different deposition of this matter before the justice. He then swore that one of the grenadiers presented his musquet at him, (the witness) and that the mob threw dirt and stones several times at the justices and soldiers, and prevaricated in a very singular manner. This witness, during his examination, happening to make use of the inflammatory

matory word, *massacre*, when he mentioned the unfortunate fate of young Allen, was reprimanded for it by the court ; upon which one of the council, who was concerned for the prosecution, with some warmth, endeavoured to vindicate the expression ; but he was ordered immediately to desist, and was told his behaviour was extremely indecent.

THOROLD LOWDELL, Surgeon, then deposed, That he knew nothing of the circumstances relating to Allen's being killed, but that he examined the wounds, which were undoubtedly the cause of the young man's death. He said, there were *two* wounds on the wrist, which appeared to him, to have been given by some *cutting* instrument; and that the wound on the chest, which broke part of his breast-bone, collar-bone, and first rib, was a *gun-shot* wound; that the orifice, by which the ball came out at the deceased's back, was *two* inches *lower* than the orifice at his breast; from which circumstances, the witness conjectured, the musquet was presented in a direction obliquely downwards. It did not appear that Mr. Lowdell had opened the

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deceased,

deceased, or that he could tell what noble parts the ball had penetrated in its progress.

GEORGE MILLFORD FLOWERS, Gent. swore, That on the 11th of May, the day after the unfortunate transaction, he assisted the constables in conveying the prisoner to jail, and while he was in the coach with the prisoner, in the course of conversation upon what had happened the day before, he (Maclane) said, *What they had done, was in consequence of the orders they had received, and hoped they should obtain mercy.* The witness was very sure the prisoner was the man that Ensign Murray removed out of the ranks on the 10th of May, and said, the prisoner was directed by Ensign Murray, not to say any thing relating to the manner in which Allen was killed before the justice.

Upon Mr. Flowers's cross-examination, he was asked, whether he did not understand the prisoner's expression, "*what THEY had done was through orders, and that he hoped THEY should obtain mercy,*" as relating to the *rest* of the soldiers, and not any particular accusation of himself?

self? Mr. Flowers replied, *he* thought it conveyed a kind of an acknowledgment of the crime. The witness was asked, what he reason he, who appeared like a gentleman, could have to interrogate the prisoner in those unfortunate circumstances, and to go in a coach with him as an assistant to the constables? He answered, he thought he did nothing more than the duty of an honest man; as he wished to see the prisoner safely conveyed to jail, and that Mr. Allen might have justice done him for the loss of his son.

WILLIAM BRAZIER, Gent. was the next evidence produced; he could only testify, that the prisoner was turned out of the ranks, and walked backwards and forwards under the wall of the King's Bench prison, and that he saw a black mark on the inside of the prisoner's coat-sleeve, which he imagined arose from his (Mac-lane's) wiping his bayonet on it, after he had fired his piece.

JACOB GILLBERT deposed, he saw young Allen between eleven and twelve of the clock, on the morning of the 10th of May, looking af-

ter his father's business; that he was not among the mob at all; and that the person in the red waistcoat, who threw stones at the soldiers and justices, was not young Allen.

FRANCIS OKIN, brother to John Okin, saw the soldiers thrust their piece against the door of the cow-house; heard the gun go off, and the officer, Murray, say, *Damn you who fired?* He said young Allen was not concerned in the riot at the King's Bench on the 10th of May, nor in any other before that day, that he ever heard or knew of, though he had been acquainted with him a considerable time.

ANN WATERS swore, she saw young Allen, on the 10th of May, between eleven and twelve o'clock, ride up the road, at the end of Blackman-street, as usual, about his father's business, and was sure he was not among the rioters.

THE evidence for the prosecution being concluded, the prisoner was asked if he had any thing to say in his defence. He replied, in a very broad Scots dialect, that he was not able to answer for himself, but he had done nothing against

against orders ; that he was commanded to follow in the pursuit, and was in the yard of the cow-house when the gun went off ; that his own musquet was not fired. That if he was guilty, he knew he should lose his life in this world, and his soul in the next ; but that he was as innocent of the crime as the child unborn, and he hoped God and his officer would stand up for him.

The prisoner's council then proceeded to examine their witnesses, the first of whom was,

SAMUEL GILLAM, Esq; who declared, That on the 10th of May, having been before applied to by the Marshal of the King's-Bench for protection and assistance, he came to the prison, where a detachment of 100 men had been ordered under the command of Col. Beauclerc. That the mob were extremely riotous, made use of many treasonable expressions, and had stuck up a seditious paper against the prison. That upon his desiring one of the constables to take down the paper, a great number of stones, &c. were thrown at the constables, soldiers, and himself. That he was hit above ten times ; at length
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the constables delivered him the paper *, which greatly enraged the mob, and they called out repeatedly, *The paper ! give us the paper !* upon which the witness told them, if any of them would claim it as his own property, he (Gillam) would immediately restore it. That after this the people grew extremely outrageous, and he attempted (it being at that time near 11 o'clock) to read the Riot Act, † but was interrupted by the stones

* Here the witness produced the paper, which was read in court and was to the following *notable* purport :

Let venal judges, ministers combine,
And here Great WILKES and LIBERTY confine ;
Yet in each English heart secure their fame is
In spite of crouded levees at St. J——s's.
Then, while in prison, Envy dooms their stay,
Here, grateful Britons, daily homage pay.

PHILO-LIBERTATIS. No. 45.

† The riot act was made in the first year of the reign of King GEORGE I. The justices of the peace, upon any dangerous disturbance or tumult, are directed by it as follows ; “ The justice of
“ the peace, or other person authorized by this act to make the
“ said proclamation, shall, among the said rioters, or as near to
“ them as he can safely come, with a loud voice command, or cause
“ to be commanded, silence to be while proclamation is making,
“ and after that, shall openly and with loud voice make, or cause
“ to be made proclamation in these words, or like in effect :

“ Our

stones that were thrown at him, * and obliged to

“ *O U R Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies.*

God save the King.”

* The act makes it *felony* for any person or persons, with force and arms to interrupt the reading of the proclamation. “ Provided always, and be it further enacted by the authority aforesaid, That if any person or persons do, or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim, or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made; that then every such opposing, obstructing, letting, hindring, or hurting such person or persons, so beginning, or going to make such proclamation, as aforesaid, shall be adjudged felony without benefit of clergy; and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy; and that also every such person and persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made, if the same had not been hindered, as aforesaid, shall likewise, in case they, or any of them, to the number of twelve, or more, shall continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made, shall be adjudged felons, and shall suffer death, as in case of felony, without benefit of clergy.”

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desist. That the mob frequently cried out, *No Wilks, no K— ! ——— Damn the K— ! ——— Damn the P——t ——— Damn the Justices !* —That at about five minutes after eleven o'clock, the witness having read the proclamation, in spite of all opposition, and explained to the rioters the dangerous consequences of their behaviour, Ensign Murray, sent to desire the assistance of the civil officers in the place where he and his men were posted : That the witness went immediately to him, and was struck on the hand and arm by a stone, which was thrown from amongst the croud by a man in a red waistcoat ; upon which the witness ordered the constables to seize him, and Ensign Murray and six or seven soldiers assisted in pursuing the fellow. That soon after, the report of a gun was heard, and when the soldiers returned from the pursuit, which lasted but a very few minutes, one of them exclaimed, *Good God ! I have accidentally killed a man.* Ensign Murray then said, *Damn you, why did you fire ? or who bid you fire ?* to which the soldier replied, *Nobody, Sir, my piece went off at half cock ;* and seemed by his countenance and manner extremely concerned and shocked at the unfortunate circumstance.

Mr.

Mr. Gillam was very sure the soldier who seemed in this distress, was not the prisoner at the bar. His figure was in many respects different from the prisoner's, and his accent also, as he spoke very fluent, good English, for a Scotsman; and as the prisoner was hardly able to express himself at all in the English language. That he (Gillam) gave no orders for the soldiers to fire at the time of the fatal accident; and that he and justice Ponton took every method in their power to prevent any mischief ensuing from the outrageous behaviour of the rioters.

In consequence of the great difference that appeared in the accounts of the evidences for the prosecution *on the trial*, and the depositions they had sworn *before the Justices*; Mr. Gillam was asked, if, at the time he took such depositions, he had read them to the parties before they signed them? when he declared, the depositions were read to each of the witnesses for the prosecution, who came before him, in the most deliberate manner.

HERBERT THOMAS, Esq; was the next witness. He corroborated Mr. Gillam's evidence, with respect to the Marshal of the King's-Bench applying to the justices for assistance, and con-

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firmed the above account of the riotous behaviour of the mob, in severely pelting the peace officers and soldiers; and added, that amongst the rest of their treasonable expressions, one of the rioters declared, *It was the most glorious time for a revolution that had ever been seen*, or words to that effect.

Mr. THOMAS, the Marshal of the King's Bench, was then produced, who declared, he had such strong reasons to be apprehensive of the mob breaking open the prison, that he had been obliged to apply for the assistance of the peace-officers and soldiers to protect it.—That the mob threatened several times to pull it down, and so lately as Sunday the 8th instant, had behaved in a very riotous manner.—That he had near 350 prisoners in his custody, who were confined for upwards of 200,000l. The rest of his evidence agreed with that of the two last witnesses, in respect to the behaviour of the mob on the 10th of May.

RICHARD NICHOLLS, constable, attended the justices on the morning of the 10th of May, and confirmed the relation of the mob's throwing stones at the soldiers, &c. and calling for the
paper.

paper. He saw a serjeant's lip severely cut by one of the stones, and followed the soldiers when they pursued the man in the red waistcoat ; but could give no information as to the manner in which young Allen was killed, nor could he tell at what time the riot act was read.

W. QUARE, constable, deposed to the same effect as Nicholls, with regard to the riot. He saw Ensign Murray and the soldiers pursue the man in the red waistcoat ; in about twelve minutes afterwards they returned to the King's-Bench, and Ensign Murray said, *One of our people has killed a man*, on which a grenadier said, *it was a sad misfortune*, and lamented having been guilty of so fatal an accident. The witness thought the prisoner was not the man, as the grenadier was marked with the small-pox, and Maclane was not. Being asked, if he (the witness) never said Maclane was the man ? He answered in the negative.

———— PHILLIPS, constable, declared, there were a great many stones, &c. thrown at the soldiers and peace-officers on the 10th of May ; that justice Ponton, said, " We must not have the officers insulted though we are," and sent

this witness with the soldiers to apprehend the fellow in the red waistcoat; that on the return of this witness to the King's-Bench, he heard one of the soldiers say, *I have killed a man by accident*, but could not be certain whether the prisoner was, or was not the man, who made use of that expression.

JOHN WELLS, constable, corroborated the account of the mob being very outrageous, and said, he took several of them prisoners on the 10th of May.

CONSTANTINE O'NEIL, corporal in the third regiment of guards, was then called to give his testimony. He said, that on the 10th of May in the morning, he came into St. George'-Fields, with the detachment of 100 men, commanded by Col. Beauclerc; that the mob, who were very numerous, received them with three huzzas, and when they (the soldiers) were ordered to prime and load, the people scoffingly cried, *No ball, No ball*, and swore, *they would take the arms from the soldiers and kill them*. That he frequently heard the treasonable expressions uttered by the mob, *No Wilkes, No K—*; and that several
soldiers

soldiers were wounded by the stones which were thrown. That during the pursuit of the man in the red waistcoat, he heard Ensign Murray *order the men not to fire upon any account*; and that when the gun was discharged at the cow-house, one Peter Mac Laughlin, a grenadier, said, *My piece went off by accident*; which words the witness heard Mac Laughlin repeat before the justices, when they returned back to the detachment, and several times after. That Mac Laughlin had since deserted.

On corporal O'Neil's cross-examination *, he said, he did not remember that the prisoner was at all concerned in the pursuit, or near the cow-house; though he, (the witness) was so much confused by the fatal accident, he could not pretend to be certain. That he did not examine Mac Laughlin's gun, though he heard there was a musquet examined; nor did he see any man

* During the deposition of this evidence, there was a smart dispute among the council, when one of the lawyers, concerned for the prosecutor, being extremely irritated, rose up and told his antagonist, " He desired it might be understood, he was in court, not only as an *Advocate* but as a *Gentleman*, and that he was ready upon all occasions to prove himself one."

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turned out of the ranks, or sit under the King's-Bench wall.

SAMUEL RIDGEWAY, hat-man in the third regiment of guards, declared, That he was concerned in the pursuit of the fellow in the red waistcoat, and that the prisoner and he were not in the cow-house when the gun was fired, but stood in the yard; that Ensign Murray said, *Who fired that gun?* to which one Mac Laughlin replied, *Sir, my piece went off at the half-cock, and I have killed a man;* and at the same time the witness saw the pan of his musquet open. That he heard Mac Laughlin mention words to the same purport the evening of the 10th of May; and also own the circumstance two days afterwards. This witness further declared, that he expostulated with Mac Laughlin upon the injustice of his suffering the prisoner to be confined for an accident, which he (Mac Laughlin) only was the cause of; that Mac Laughlin bid the witness never mind it, for as the prisoner was innocent, he could come to no hurt; or words to that effect. Ridgeway also said the reason of the prisoner's piece being examined by

by Ensign Murray, was owing to his flint being so long, that when it was upon the half cock, the cover of the pan would not shut down ; that Ensign Murray reprimanded the prisoner for not having a proper flint, and threw the priming out of his pan ; which circumstance, the witnesses imagined caused the mob, who were at a distance, to fix upon the prisoner, as the person who fired the gun ; that the mob being very riotous, and pointing at Maclane, he was ordered out of the ranks, which the witnesses supposed, confirmed the people in the opinion, that the officers themselves were satisfied, he was the soldier by whom young Allen had been killed,

The next evidence produced, was JAMES HYDE, grenadier in the third regiment of guards, who swore, That he was employed in the pursuit after the fellow with the red waist-coat, and when the grenadiers got to the cow-house, he (Hyde) and Mac Laughlin entered the door, Mac Laughlin first and the witness after ; that he saw a young man in a red waist-coat

coat at the other end of the cow-house, and at that instant Mac Laughlin's piece went off and and the youth fell down; that he was very sure there was no other foldier within the cow-house but Mac Laughlin, whom he stood close by at the time, and himself; he did not recollect seeing Maclane the prisoner among the pursuers at all, but said, there was a constable with them. That the intention of Mac Laughlin and himself was to take the young lad prisoner. That he heard no words spoke in the cow-house; nor did he see Okins, or any one else there but Mac Laughlin and the youth in the red waistcoat. That Mac Laughlin owned, it was his piece that went off, and he (the witness) saw him prime it a short time afterwards.

When cross-examined, Hyde was asked why he did not run up to the young man who was wounded, to assist him, it being natural to do so when such an accident had happened; he replied, he was in great confusion, and hurried back to the detachment, as fast as he could, and that he never heard Maclane was suspected
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of killing the unfortunate young man that day, as he (the witness) left the field soon after with Capt. Fouke's party.

WILLIAM COOPER, grenadier in the third regiment of guards, was then examined, and declared, he was ordered upon the party to pursue the fellow, who had been so remarkable for throwing stones, &c. on the morning of the 10th of May in St. George's-fields; that some of the soldiers got before the witness, and that just as he came up to the gate of the cow-house he heard a gun discharged; on which he run in, and saw young Allen lying on the ground, and Mac Laughlin standing near him with his musquet across his arm; that he then saw Brawn, and heard him say, *a murder was done*, but does not recollect what reply was made to these words. He saw Mac Laughlin wipe his bayonet, which was foul from his musquet, having been fired,

When Cooper was on his cross-examination, he said he could not tell whether Maclane the prisoner, was upon the party that pursued or

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not, and that he saw young Allen sit upon the ground after he fell and untie his neckcloth.

JAMES EARL, serjeant in the third regiment, was the next witness who appeared; the substance of his evidence was, that about half an hour after ten o'clock at night, on the 10th of May, when Maclane the prisoner had been put upon the guard, he (Earl) was in the garden behind the Marshal's house at the King's Bench, in company with Mac Laughlin, who declared to him, that he (Mac Laughlin) was the man who had been so unfortunate as to shoot young Allen; that it was done by accident, as his piece went off while it was on the half cock, and he hoped he should not be hurt.

CHARLES STEWART, another serjeant in the third regiment of guards, confirmed the evidence of Ridgeway, in respect to the prisoner's musquet being examined by Ensign Murray; that Maclane's flint was so long it kept the cover of the pan open when it was upon the half cock, and that its being taken out of his hand

hand by the ensign, who reprimanded him severely for his carelessness upon that occasion, caused a great murmur among the mob, who seemed, from that circumstance, to be convinced that the prisoner was the person who killed the unfortunate young man.

———— PURDAY, of the same regiment, declared, he was in St. George's Fields with the detachment under the command of Col. Beauclerc, on the morning of the 10th of last May, when Mac Laughlin returned with the rest of soldiers from the pursuit of the man in the red waistcoat, and that he (the witness) heard Mac Laughlin say, in the presence of Justice Gillam, and several others, that he *had accidentally killed a man, his piece going off at half cock*; and saw Mac Laughlin prime and load his musquet soon after the above confession.

GEORGE BRUCE, of the third regiment of guards, swore, that as he was standing centinel at one of the doors of the King's Bench prison, about 3 o'clock in the afternoon, on the 10th

day of last May, Peter Mac Laughlin came up to him, and told him, with great concern, that he (Mac Laughlin) had killed a man by accident, as his piece went off at the half cock; and requested the witness to lend him his oil-rag to clean the musquet, which he (the witness) did, and took particular notice of a very singular circumstance, namely, that the number marked upon Mac Laughlin's firelock was *forty-five!*

JOSEPH ODDY; of the third regiment of guards, was then brought to give his testimony, but as he could inform the court of nothing but some conversation which passed between him and Peter Mac Laughlin on the 12th and 13th of last May, his evidence was objected to, and not taken.

JOSEPH SWINDALL, of the third regiment of guards, was the next witness. He said, that he was at the King's Bench at the time Ensign Murray returned with the soldiers from pursuing the fellow in the red waistcoat, and that
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Mac Laughlin told him, *his piece had gone off by accident, and had killed a man.* The witness moreover saw him prime and load afterwards.

JAMES HAY, publican in the rules of the King's-Bench, declared he heard on the evening of the 10th of last May, one of the guards say, Mac Laughlin did the deed ; and that his piece went off by accident.—This witness was asked, by the council for the prosecution, whether he had not owned at the Half-moon in Guildford, some time before the trial, that he knew *nothing at all* of the matter in question ? To which he replied in the negative ; but said, he declared every where, that he knew *little* of the matter in dispute, which he believed the court were convinced of, from the testimony he had given.

THE evidence being gone through on both sides, Baron SMYTHE proceeded to sum up the whole to the Jury. He gave the spirit of each witnesses deposition with great judgment
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and perspicuity, omitting all superfluous circumstances, only observing wherein the main question lay, and stated impartially whatever testimony had been given to support it. He made very few remarks for the jury to regulate their conduct by, as the matter did not turn upon any difficult point of law, but was reduced to a plain simple question, whether the prisoner was the person who killed the unfortunate young man, or not?

The Jury then withdrew, and after consulting together for near an hour, returned into court, and found the prisoner, *Donald Maclane*, **NOT GUILTY.**

F I N I S.

This View of the Trial of Donald Mac-
lane, is entered in Stationers Hall,
and whoever presumes to pirate it, or
any Part of it, will be prosecuted.

